

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

RHONDA GIBSON,	)	
Plaintiff	)	
v.	)	Civil Action No. 05 - 1082
	)	Judge Joy Flowers Conti
LAFAYETTE MANOR, INC.	)	Magistrate Judge Lisa Lenihan
Defendant.	)	

**ORDER**

Two of Defendant's representatives who have been deposed in the above captioned case provided Errata Sheets that changed previous deposition testimony. These Errata Sheets were submitted in accordance with Federal Rule of Civil Procedure 30(e) and provided less than thirty days after the depositions. Plaintiff has filed a Motion to Strike the changes arguing, *inter alia*, that no reasonable justifications were provided for the changes and that the responses are substantially altered.

Rule 30(e) provides that within thirty days of being notified that a deposition transcript is available, "if there are changes in form or substance" the deponent may "sign a statement reciting such changes and the reasons given by the deponent for making them." The reasons given herein are that the responses were incorrect.

This Court chooses to follow the one case from this district<sup>1</sup> addressing this issue, Titanium Metals Corp. v. Elkem Management, Inc., 191 F.R.D. 468 (W.D. Pa. 1998). In that case, with a similar issue presented, Judge Smith cited Wright & Miller Federal Practice & Procedure § 2118, at 134 (1994), stating "[R]ather than consign the deponent's initial response to

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<sup>1</sup>No Circuit Court cases have been decided on this issue.

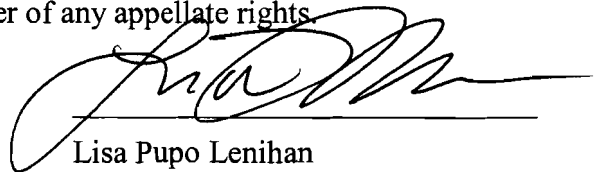
the oblivion of the court reporter's computer, the proper course is to order that 'the original answers must ... remain in the record.' *Id.* at 135. That way, '[t]he witness who changes his or her testimony on a material matter between the giving of the deposition and appearance at the trial may be impeached by the former answers[.]' *Id.*" 191 F.R.D. at 472.

This Court believes that is the most effective manner in which to handle this situation. Therefore,

**IT IS HEREBY ORDERED** that Plaintiff's Motion to Strike is **DENIED**.

**IT IS FURTHER ORDERED** that Geramita and Bowser's original deposition testimony, along with the changes made in the Errata Sheets, are to remain part of the record in this matter. No further deposition will be permitted, however, Plaintiff is granted the opportunity to use the former statements as impeachment material at trial as provided in the Federal Rules of Evidence.

In accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1)(A), and Rule 72.1.3(B) of the Local Rules for Magistrate Judges, the parties are allowed ten (10) days from the date of service of a copy of this Order to file objections to this Order. Any party opposing the objections shall have seven (7) days from the date of service of objections to respond thereto. Failure to file timely objections may constitute a waiver of any appellate rights.

A handwritten signature in black ink, appearing to read 'Lisa Pupo Lenihan', is written over a horizontal line.

Lisa Pupo Lenihan  
United States Magistrate Judge

CC: Counsel of Record